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SDPD OFFICER MUNOZ,
SDPD OFFICER DAWSON,
SDPD OFFICER PIERCE,
SDPD OFFICER BOLLIG

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DANIEL T. BRUMFIELD, M.D, and DAINA
RYCKMAN,

Plaintiffs

v.

SDPD OFFICER MUNOZ,
SDPD OFFICER DAWSON,
SDPD OFFICER PIERCE,
SDPD OFFICER BOLLIG,
AMERICO A. ALBALA, M.D.,
MICHAEL E. MCMANUS, M.D.,
And DOES 1-20 inclusive,

Defendants.

Case No. 08 CV 0958 WQH NLS

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DAMAGES**

Pursuant to Federal Rule of Civil Procedure 38(b), Police Officer Juan M. Munoz, Police Officer Jerome V.C. Dawson, Police Officer Kevin W. Pierce, and Police Officer Allen G. Bollig, ("Defendants"), hereby demand trial by jury for all issues, and answer Plaintiffs' Complaint as follows:

JURISDICTION

1. The allegations set forth in paragraph 1 constitute conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied. Defendants admit this Court has jurisdiction.

VENUE

2. Defendants admit venue is proper.

GENERAL ALLEGATIONS

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 3, and therefore deny the allegations therein.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 4, and therefore deny the allegations therein.

5. Defendants admit that they are employed by The City of San Diego as Police Officers. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 5, and therefore deny the allegations therein.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the first sentence of paragraph 6, and therefore deny the allegations therein. The remaining allegations set forth in paragraph 6 constitute Plaintiffs' characterizations of their lawsuit and require no response. To the extent that a response is required, said allegations are denied.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 7, and therefore deny the allegations therein.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 8, and therefore deny the allegations therein.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 9, and therefore deny the allegations therein.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 10, and therefore deny the allegations therein.

FACTUAL ALLEGATIONS

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 11, and therefore deny the allegations therein.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 12, and therefore deny the allegations therein.

Further, the allegations set forth in paragraph 12 appear to constitute Plaintiffs' characterizations

1 of an ARJIS crime map website, which speaks for itself, is the best evidence of its contents and
2 requires no response.

3 13. Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the averments set forth in paragraph 13, and therefore deny the allegations therein.

5 14. Defendants admit that officers from the San Diego Police Department responded
6 to a call from the Brumfield residence on or about May 28, 2007 and left after conducting a brief
7 investigation. Defendants are without knowledge or information sufficient to form a belief as to
8 the truth of the remaining averments set forth in paragraph 5, and therefore deny the allegations
9 therein.

10 15. Defendants are without knowledge or information sufficient to form a belief as to
11 the truth of the averments set forth in the first sentence of paragraph 15, and therefore deny the
12 allegations therein. Defendants admit that on May 28, 2007 a person identifying himself as Dr.
13 Brumfield called 911 at 2:51 p.m. Defendants are without knowledge or information sufficient to
14 form a belief as to the truth of the remaining averments set forth in paragraph 15, and therefore
15 deny the allegations therein.

16 16. Defendants admit that on May 28, 2007 a person identifying herself as Mrs.
17 Brumfield spoke with a 911 operator at or around 2:51 p.m. Defendants are without knowledge or
18 information sufficient to form a belief as to the truth of the remaining averments set forth in
19 paragraph 16, and therefore deny the allegations therein.

20 17. Defendants admit that Mrs. Brumfield advised the 911 operator that there was a
21 gun in the home. Defendants admit that the 911 dispatcher told Mrs. Brumfield to wait outside for
22 the police. Defendants are without knowledge or information sufficient to form a belief as to the
23 truth of the remaining averments set forth in paragraph 17, and therefore deny the allegations
24 therein.

25 18. Defendants admit that Mrs. Brumfield advised the 911 operator that they had set
26 off an indoor fogger in the basement of the residence. Defendants are without knowledge or
27 information sufficient to form a belief as to the truth of the remaining averments set forth in
28 paragraph 18, and therefore deny the allegations therein.

1 19. Defendants admit that at least five police vehicles and a helicopter responded to
2 the 911 call. Defendants admit that a request was made over the helicopter PA system that Mr.
3 Brumfield come out of the residence as Mrs. Brumfield had the home telephone in her possession
4 outside of the residence. Defendants admit that at least one police officer drew his weapon as Mr.
5 Brumfield walked out of the residence. Defendants admit that after searching Mr. Brumfield he
6 was found to not have a weapon on his person. Defendants admit that a handgun loaded with six
7 cartridges in the cylinder was located on top of a dresser in the master bedroom. Defendants deny
8 they used excessive force on Plaintiff Brumfield. Defendants are without knowledge or
9 information sufficient to form a belief as to the truth of the remaining averments set forth in
10 paragraph 19, and therefore deny the allegations therein.

11 20. Defendants admit that Plaintiff Ryckman and an unleashed dog approached the
12 officers while they were attempting to handcuff Plaintiff Brumfield. Defendants admit that
13 Plaintiff Ryckman was placed in handcuffs and advised that she was being detained for violation
14 of Penal Code §148. Defendants admit that Plaintiff Ryckman was placed in the back of a police
15 vehicle and subsequently released at the scene. Defendants admit that Plaintiff Ryckman was not
16 booked or charged with a crime on May 28, 2007. Defendants are without knowledge or
17 information sufficient to form a belief as to the truth of the remaining averments set forth in
18 paragraph 20, and therefore deny the allegations therein.

19 21. Defendants admit that Mr. Brumfield was taken to County Mental Health pursuant
20 to Welfare and Institutions Code §5150. Defendants admit that Mrs. Brumfield was not allowed
21 to ride in the police vehicle with Mr. Brumfield pursuant to San Diego Police Department policies
22 and procedures. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the remaining averments set forth in paragraph 21, and therefore deny the allegations
24 therein.

25 22. Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the remaining averments set forth in paragraphs 22, 23, 24, 25, 26, 27, 28, 29, and 30,
27 and therefore deny the allegations therein.

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FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983

Unreasonable (warrantless) Seizure

By Plaintiff Brumfield against Defendants Munoz, Dawson and Pierce

23. Defendants Munoz, Dawson and Pierce re-assert and incorporated by reference their responses to paragraphs 1 through 30 as though fully set forth herein.

24. Defendants Munoz, Dawson and Pierce deny the allegations set forth in paragraphs 32, 33, 34, 35 and 36.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983

Unreasonable Seizure: Excessive Force

By Plaintiff Brumfield against Defendants Munoz, Dawson and Pierce

25. Defendants Munoz, Dawson and Pierce re-assert and incorporated by reference their responses to paragraphs 1 through 36 as though fully set forth herein.

26. Defendants Munoz, Dawson and Pierce deny the allegations set forth in paragraphs 38, 39, 40, 41 and 42.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983

Unreasonable (warrantless) Seizure

By Plaintiff Daina Ryckman against Defendants Pierce and Bollig

27. Defendants Pierce and Bollig re-assert and incorporated by reference their responses to paragraphs 1 through 42 as though fully set forth herein.

28. Defendants Pierce and Bollig deny the allegations set forth in paragraphs 44, 45, 46, 47 and 48.

FOURTH CLAIM FOR RELIEF

42 U.S.C. § 1983

Unreasonable Seizure: Excessive Force

By Plaintiff Brumfield against Defendants Pierce and Bollig

29. Defendants Pierce and Bollig re-assert and incorporated by reference their responses to paragraphs 1 through 48 as though fully set forth herein.

30. Defendants Pierce and Bollig deny the allegations set forth in paragraphs 50, 51, 52, 53 and 54.

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FIFTH CLAIM FOR RELIEF

**Professional Negligence – Medical Malpractice
By Plaintiff Brumfield against Defendants Albala and McManus only**

31. Paragraphs 55, 56, 57, 58 and 59 are not directed at Defendants and therefore no response is required. To the extent that a response is required, said allegations are denied.

AFFIRMATIVE DEFENSES

As separate, distinct and affirmative defenses to the Complaint on file herein, and to each cause of action, Defendants allege as follows:

I

Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

II

Defendants acted in good faith and with a reasonable belief that their conduct was lawful and necessary.

III

Defendants are not liable for punitive damages.

IV

Defendants are not liable for injuries resulting from acts or omissions which were an exercise of discretion in the absence of a statute declaring such liability.

V

Defendants are not liable while acting within the scope of their duties for injuries resulting from judicial or administrative proceedings.

VI

Defendants are not liable for the execution or enforcement of the California Penal Code or California Welfare and Institutions Code where due care is exercised.

VII

Defendants are not liable for violation of the Plaintiffs' civil rights in that the alleged wrongful acts were not under color of any statute, ordinance, regulation, custom or usage of the City of San Diego.

VIII

At the time of the contact, Defendants attempted to persuade Plaintiffs to follow directions and in doing so, only used force necessary for the occasion.

IX

Plaintiffs themselves were negligent in and about the matters alleged in the Complaint and said carelessness on their own part proximately contributed to the happening of the alleged incident, injuries and damages complained of, if any such exist.

X

Defendants were at all times alleged in the Complaint performing duties required by law under conditions required by law.

XI

Any and all acts of Defendants at or near the time alleged in the Complaint were reasonable and said Defendants had reasonable cause to act in the manner they did.

XII

At the time of the initial contact, Defendants were acting within the scope of their employment and had probable cause to believe Plaintiffs were engaging in, or had just engaged in, a prohibited activity. During the contact, Defendants were acting within the scope of their employment and had probable cause to believe that said Plaintiffs had committed either a felony or misdemeanor in their presence, and also that Plaintiffs presented a danger to both the officers and to others.

XIII

Defendants are immune from liability pursuant to the provisions of Government Code Sections 820.2, 820.4, 820.6, 821.6 and 856(a)(1).

XIV

Defendants are immune from liability pursuant to the provisions of Welfare & Institutions Code Section 5278.

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1 WHEREFORE, these answering Defendants pray judgment as follows:

2 1. Plaintiffs take nothing by their Complaint;

3 2. Defendants receive their costs of suit incurred herein; and

4 3. Such other relief as the court deems proper.

5 Dated: June 30, 2008

MICHAEL J. AGUIRRE, City Attorney

6
7 By /s/Jane M. Boardman

JANE M. BOARDMAN

8 Deputy City Attorney

9 Attorneys for Defendants
10 SDPD OFFICER MUNOZ,
11 SDPD OFFICER DAWSON,
12 SDPD OFFICER PIERCE,
13 SDPD OFFICER BOLLIG
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 DANIEL T. BRUMFIELD, M.D, and DAINA
4 RYCKMAN,

5 Plaintiffs

6 v.

7 SDPD OFFICER MUNOZ,
8 SDPD OFFICER DAWSON,
9 SDPD OFFIER PIERCE,
10 SDPD OFFICER BOLLIG,
11 AMERICO A. ALBALA, M.D.,
12 MICHAEL E. MCMANUS, M.D.,
13 And DOES 1-20 inclusive,

14 Defendants.

Case No.: 08 CV 0958 WQH NLS

CERTIFICATE OF SERVICE

12 I, the undersigned, declare that I am over the age of eighteen years and not a party to this action;
13 and that I served upon Plaintiff the following documents: DEFENDANTS' ANSWER TO
14 PLAINTIFFS' COMPLAINT FOR DAMAGES,

15 in the following manner:

16 By electronic filing, I served each of the above referenced documents by E filing, in accordance
17 with the rules governing the electronic filing of documents in the United States District Court for
18 the Southern District of California; and

19 By mail, I caused the above referenced documents to be mailed through the United States Postal
20 Service to Plaintiff at the following address:

21 Keith H. Rutman (CSB #133175)
22 Attorney at Law
23 402 West Broadway, Suite 2010
24 San Diego, California 92101-8516
25 Tel: (619) 237-9072
26 Fax: (619) 454-4372
27 Email: krutman@krutmanlaw.com

28 I declare under penalty of perjury that the foregoing is true and correct.

Executed: June 30, 2008, at San Diego, California.

/s/ Jane M. Boardman
JANE M. BOARDMAN
jboardman@sandiego.gov